GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16020 of **Raimonda and Tyrus D. Barre**, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph Bottner, Zoning Administrator made on October 5, 1994, to the effect that the property owner may construct a pool house per plans filed with the Zoning Administrator in an R-1-A District at 4524 Garfield Street, N.W. (Square 1339, Lot 811).

HEARING DATE: **February 8, 1995**
DECISION DATE: **April 5, 1995**

ORDER

SUMMARY OF THE EVIDENCE:

BACKGROUND:

The subject appeal involves the appellants, Raimonda and Tyrus Barre, owners of 2811 Foxhall Road, N.W.; the respondent, the Zoning Administrator; and Mr. Ralph Davidson, owner of the subject property. Mr. Davidson was granted intervenor status by the Board. Due to the limited nature of Mrs. Barre's participation in the actual proceedings, for the purposes of this order, only Mr. Barre will be referred to as the appellant.

As a procedural matter, the property owner, Mr. Davidson, moved to exclude as irrelevant certain exhibits filed as part of the appellant's pre-hearing statement. The intervenor sought to exclude all those exhibits which do not relate to the plans approved by the Zoning Administrator in October of 1994. Inasmuch as the Board members had already received and reviewed the material, the Chairman ruled to admit those items to the record but to give them the weight that they deserve as related to pertinent issues.

The subject property is located at the southeast corner of the intersection of Garfield Street and Foxhall Road, N.W., on Lot 811 in Square 1339. The property is located in the R-1-A District.

The subject lot contains approximately 31,655 square feet of land area. It has a width of 168.73 feet along Garfield Street and a rear yard of 105 feet. The property is known as 4524 Garfield Street, N.W. It is improved with a single-family dwelling which contains approximately 6,056 square feet of floor area. There is a swimming pool located in the rear yard of the property. When the property was purchased in January 1990, there was also a 170-square foot pool house in the rear yard at the southeastern corner of the lot near the pool.

The appellant lives at 2811 Foxhall Road, N.W. His lot is located to the south of the subject property. The front yard of the appellant's property abuts the rear yard of the subject property. A fence separates the two adjoining properties.

After assuming ownership of the subject property, the owner, Mr. Davidson, began construction, without a permit, of a large two-story pool house. The appellant, Mr. Barre, contacted the Department of Consumer and Regulatory Affairs (DCRA) to question the construction and review the plans. On August 20, 1990, after it was learned that no building permit had been applied for or issued to Mr. Davidson, a stop work order was issued for the construction then underway. Mr. Davidson filed plans for a building permit for the pool house. These plans showed the construction of a two-story, 23-foot high structure. On the first floor there was to be a living room with a large fireplace and a kitchen equipped with an electric range, a microwave oven, a dishwasher and an icemaker. The first floor also had a dining room and a bathroom. On the second level there were two rooms designated as bedroom/office space. Heating and air conditioning were also provided. The owner planned to use the structure as a pool house and possibly as "guest quarters." On September 4, 1990, the Zoning Division of DCRA approved a building permit for the structure.

Mr. Barre complained a second time about the structure and another stop work order was issued, this time requiring Mr. Davidson to modify the interior of the structure. Mr. Davidson was also informed that the structure could not be used for living quarters. On October 1, 1990, revised plans were submitted to DCRA.

After the third stop work order was issued, and in order to address the issues raised by DCRA, Mr. Davidson submitted to DCRA revised plans which lowered the ceiling of the second floor by one inch and changed the names of the space designations. Mr. Davidson converted the living room to a poolroom and changed the grade immediately around the structure by adding a two-foot retaining wall to deal with the fact that the height of the structure exceeded that permitted for an accessory building. A new building permit was issued to Mr. Davidson allowing for a "three-story" building, which was later revised to authorize a one-story pool house or the pool house which was constructed one inch shy of being two stories.

Mr. Barre again challenged the issuance of the permit and argued that Mr. Davidson's grading of the property was improper. The Zoning Administrator refused to stop work on the pool house and Mr. Barre filed an appeal with this Board challenging the decision to issue that permit and the determination that the pool house was a valid "accessory building." According to the appellant, a pool house as large as Mr. Davidson's is not customary for the District of Columbia.

By order dated June 28, 1991, the Board granted the appeal concluding that the pool house, as designed, was not an accessory building within the meaning of that term. The Board further concluded that "the design of the structure shall be altered and the scale reduced to bring the structure into compliance with the intended meaning of "accessory building" as that term is customarily used in the District of Columbia." (See BZA Appeal No. 15453). The Board reasoned that while Mr. Davidson revised the plans to eliminate many of the rooms and amenities within the pool house and bring the pool house into compliance with the Zoning Regulations as to height, number of stories and intended use, "no adjustments were made to the design and size of the structure to make them consistent with the" customary size of other pool house accessory structures.

Mr. Davidson appealed the Board's decision to the D.C. Court of Appeals. (*Ralph Davidson v. District of Columbia Board of Zoning Adjustment*, 617 A.2d 977 (D.C. App. 1992)). In that appeal, Mr. Davidson argued that that the Board had no discretion to order him to reduce the size of the structure, as long as the structure was being used for legitimate accessory purposes. The Court disagreed and affirmed the decision of the Board, holding that the Board's determination that the pool house did not meet the definition of "accessory building" was not arbitrary and capricious. Further the Court held that the Board's interpretation of the accessory building regulations to restrict the scale of activities that may be conducted in the intervenor's pool house was not plainly erroneous. The Court pointed out that it was proper for the Board to focus, not only on the size of the structure, but also on the design and contents of the building. The Court noted that the Zoning Regulations governing accessory buildings restrict *use* as well as the *physical aspects* of these structures. Meeting the physical requirements and limitations is not all that is required to come within the meaning of the Regulations. The Court determined that the nature and scale of permissible use is not unlimited. Mr. Davidson requested a rehearing by the Court but was denied in June 1993.

On October 6, 1993, Walter E. Lynch, agent and architect for Mr. Davidson, filed amended drawings with DCRA, showing removal of the storage lofts and the wall between the main room and the recreation room, elimination of the dishwasher and microwave and reduction of the wet bar to a minimum size.

On December 23, 1993, Joseph Bottner, Jr., the Zoning Administrator, sent a letter to Mr. Lynch indicating that the reduction in design and scale was insufficient. Mr. Lynch met with Mr. Bottner in January and February 1994 to determine what reduction would be acceptable, with Mr. Bottner unwilling to indicate what changes would be necessary.

On June 13, 1994, Mr. Lynch met with Mr. Hampton Cross, Director, DCRA, and Ms. Gladys Hicks, the Acting Zoning Administrator, in the absence of Mr. Bottner, to discuss revisions to the plans. At that meeting, Mr. Cross and Ms. Hicks agreed that reducing the height by four feet, lowering the chimney by four feet and reducing the wet bar to a minimum size would be sufficient to meet the Board's order of October 28, 1991.

On July 19, 1994, Mr. Bottner sent a letter to Mr. Davidson setting forth a list of conditions that the pool house would have to meet to comply with the Board's order. The text of that letter follows:

> Dear Mr. Davidson:
>
> This letter is being directed to you as a result of final decisions by the Board of Zoning Adjustment (BZA), Case Number 15453, and the D.C. Court of Appeals in Case Number 91-AA-847.
>
> Your architect, Walter E. Lynch, on October 6, 1993, filed plans for modification of your pool house; however, my letter to Mr. Lynch, dated December 23, 1993, advised him that the plans did not show that the building will be reduced in scale. Consequently,

I disapproved the application and requested that you take immediate steps to conform with Board of Zoning Adjustment conditions.

I have not received plans relating to your pool house after my December 23, 1993 letter to Mr. Lynch. The Board of Zoning Adjustment and the Court of Appeals found your existing pool house to be a main building rather than an "accessory building". The Board has ordered that the design of the structure be altered and the scale reduced to bring the structure into compliance with the intended meaning of "accessory building", as that term is customarily used in the District of Columbia.

The Board found that the structure was large enough and fully equipped to accommodate activities such as "cooking, dining, studying, entertaining and other activities associated with daily life." The Board further determined that many of these uses exceeded what is customary for pool house uses in the District of Columbia and that they are not incidental to uses of the main building.

Because I am obligated to enforce the decision of the Board of Zoning Adjustment and the Court of Appeals, as it relates to your pool house, you must therefore reduce the size and height of your pool house and limit its contents. The pool house must be reduced by 350 square feet, resulting in the building having only 430 square feet of area. The contents of the pool house must be limited to a changing room, shower, a commode, a basin, a wet bar with a small area adjacent to the wet bar, and a mechanical equipment room, sufficient only for the pool. All other proposed contents of the pool house are prohibited.

The building must have only one story with no storage loft. Further, the building must be reduced by two feet in height. Also, the fireplace must be removed.

I will review all of your revised plans in order to assure compliance with the above conditions. Your revised plans must be approved by me and a building permit issued no later than August 5, 1994. Construction must be completed by no later than September 16, 1994. Your construction shall be inspected for zoning compliance no later than September 23, 1994. Failure to comply with these conditions will result in appropriate enforcement action. ... Sincerely, Joseph F. Bottner, Jr. Zoning Administrator... [copies to: Hampton Cross, Pat Montgomery and Ted Gordon]

This letter was sent without Mr. Bottner's knowledge of the June 13th meeting between Mr. Lynch, Mr. Cross and Ms. Hicks.

Mr. Bottner met with Mr. Lynch on September 21, 1994 and sent a subsequent letter, of the same date, to Mr. Davidson. That letter requested that Mr. Lynch submit plans by September 28, 1994.

Pursuant to the June 13th agreement and Mr. Bottner's September 21st letter, Mr. Lynch filed an application for a building permit on September 27, 1994, to make the changes in the existing building. The permit application describes the scope of work as follows:

- Remove existing hip roof down to eave.
- Remove existing chimney.
- Provide Leyland Cypress per neighbors' approval at property line.
- Remove wet bar cabinets, refrigerator, microwave, sink, power supply and plumbing.
- Remove wall between poolroom/recreation, storage room as indicated.
- Remove ceiling above dressing area.
- Remove platforms at loft areas (2).
- Remove framing, drywall from platforms/ceiling above dressing area and storage area.
- Remove framing, roofing, plywood decking of main hipped roof.
- Install new flat roof.

Mr. Barre was of the view that while this proposal would result in a small reduction in the height of the pool house, it would not reduce the scale, density or floor area of the pool house.

On October 5, 1994, DCRA issued permit No. B390383 for "alterations and repairs to an existing pool house (accessory to main house)." By letter dated October 13, 1994, Mr. Barre was notified of the issuance of the permit. The instant appeal was filed on October 25, 1994.

ISSUES PRESENTED:

The issue presented in this appeal is whether the Zoning Administrator erred in approving the issuance of a building permit for the pool house with the changes proposed in the plans? In deciding this issue, the Board must determine whether the alterations made to the plans sufficiently reduced the scale of the pool house to bring the structure into compliance with the mandate of the Board's order and into compliance with the intended meaning of the Section 204.1 which allows "other buildings or structures **customarily incidental** to the uses permitted in R-1 districts...".

ARGUMENTS:

At the public hearing of February 8, 1995, the appellant stated that when the Court of Appeals upheld the Board's earlier decision, he thought the matter was concluded, but after years have passed, the pool house still remains, the same size and in the same place as before – almost on top of his property line. The appellant maintained that from the point of view of enjoying his

property, the only change which Mr. Davidson has proposed is to alter the slope of the roof so that it is now slightly lower than before but inconsequentially. The appellant asked the Board to see that the Zoning Regulations are enforced and that the Board adheres to its original decision regarding this building.

Ellen McCarthy, an expert in planning and zoning testified on behalf of the appellant. According to Ms. McCarthy, the proposed pool house, with alteration, is not an accessory building since its size is not that of a customarily accessory pool house in the District of Columbia and approval of the building permit was inconsistent with the Comprehensive Plan, 10 DCMR 1103 & 1105.

In her testimony, Ms. McCarthy referred to the board's prior order which required that the "scale" be "reduced" and noted that Webster's New Collegiate Dictionary defines "scale" as:

> Relative dimensions, without difference in proportion of parts; esp. proportion in dimensions between a drawing, map, etc., and that represented; as, drawn to a scale of one inch to a mile.

According to Ms. McCarthy, the essential notion of reducing the scale of a building is one that requires a reduction in "proportion" – that is, if the building is slightly reduced at the roof, but none of the other dimensions have been altered proportionally, it has not been reduced in **scale**, but merely in **height**. In Ms. McCarthy's opinion, the proposed modification does not deal with the Board's initial concern that the overall scale of the building was too great to fit the classification of being **customarily incidental**. Merely changing the slope of the roof, which is all that is being proposed in terms of any reduction of the height of the facility, would have an inconsequential effect on the scale of the pool house.

Ms. McCarthy also stated that her opinion was supported by other provisions of the Zoning Regulations. The Zoning Regulations place some importance on separating the daily activities of living of one neighbor from those of another in R-1 zones, in that restrictions are placed on rear and side yards. If density of use were the sole justification for the zoning function, then the regulations would merely impose lot coverage and bulk/height restrictions on residences. The fact that the Zoning Regulations then allow accessory buildings, but not additions or extensions of the main house, to be located within the required 25 foot setback relates to the traditional function of accessory buildings – tool sheds, garden equipment sheds, and small storage areas. This is further borne out by two additional zoning restrictions placed on accessory uses: § 2500.3, which allows no more than 30 percent of the area of the rear yard to be occupied by an accessory building, and §§ 2500.5 and 2500.6, the restrictions on private garages - the one accessory use which is explicitly permitted to be larger, and to include sleeping quarters for domestic help.– these sections permit garages to have a second story used for sleeping quarters. The garage restrictions limit the height of the building, require a setback at least equal to the width of required side yards in the district in which it is located, and prohibit the building from being located within the required rear yard.

Ms. McCarthy testified that she surveyed four architects who have a considerable practice in residential architecture, to ascertain what is customary for the size if a pool house,

based on their experience. The four architects surveyed were Robert Bell, Heather Cass, Andre Houston, and Robert Schwartz. According to Ms. McCarthy, the customary size of the pool houses with which these architects were familiar was similar to the size originally specified by the Zoning Administrator in his letter to Mr. Davidson dated July 19, 1994. That is between 400 and 500 square feet, although one pool house was as small as nine square feet. Therefore, Ms. McCarthy concluded that the modification under consideration, while it reduces the pitch of the roof, and therefore reduces the height minimally, the scale of the building, as measured in square feet does not result in a pool house which is customarily incidental to the main house owned by Mr. Davidson.

Subsequent to the issuance of the permit and filing of the instant appeal, and prior to the hearing on the appeal, Mr. Bottner retired from the District of Columbia government. Ms. Gladys Hicks was the Acting Zoning Administrator for part of the time that revisions to the plans were under discussion, due to Mr. Bottner's absence on extended sick leave. Ms. Hicks was the Deputy Zoning Administrator at the time the permit was issued. At the time of this hearing, Ms. Hicks was the Acting Zoning Administrator and she appeared at the public hearing and testified as the respondent.

Ms. Hicks testified in support of the building permit issued to Mr. Davidson. She stated that Mr. Bottner had reviewed the plans for the proposed modifications to the pool house and concluded, after thorough discussion, that the plans met the requirements of the Zoning Regulations and that the scale had been reduced consistent with the order of the Board. Ms. Hicks stated that she was unaware of Mr. Bottner's July 19, 1994 letter to Mr. Davidson or the reasons why Mr. Bottner changed his position and authorized a permit to Mr. Davidson to alter the pool house without complying with the terms of the letter. Ms. Hicks believed that she had approved similar sized pool house s but could not recall any specific one. Ms. Hicks also stated that when presented with an application for a building permit for an accessory building, she does not determine whether the size of the building is customary for other similar accessory uses. Instead, Ms. Hicks merely determines whether it meets the maximum height and area requirements permitted by the Zoning Regulations. Finally, Ms. Hicks acknowledged that this approach had been rejected by the Board in its prior decision and she asked the Board to give her office some guidance if it should decide that the pool house is still too large to be an accessory building.

The intervenor, Mr. Davidson, presented the testimony of an expert in land planning and zoning in the District of Columbia. The expert testified that:

a. The permit application would result in significant reductions in the scale of the building by lowering the height by 4 feet (more than 25%) and the floor area by approximately 450 square feet (more than 35%).

b. The interior changes would reduce the scale of use of the building, by removing kitchen appliances, removing lofts and partitions which created areas that could have been used for sleeping and by rendering the building unsuitable as habitable space.

c. The building would meet all of the requirements of Section 2500 of the Zoning Regulations concerning accessory buildings, including the overall lot occupancy requirements and the limitation on occupancy of required yards.

d. The pool house is incidental in size and scale compared to the main dwelling. The lot occupancy of the pool house is approximately 2.58 % and the pool house would have approximately one-seventh of the floor area of the main house.

e. In R-1 Districts, the Zoning Regulations allow bigger buildings, including the main house and any accessory buildings, on bigger lots, because of the combined effect of lot occupancy and height limitations.

f. The subject pool house is comparable to other accessory buildings in the area. The area which was considered is zoned R-1, predominantly R-1-A, and includes both sides of Foxhall Road from W Street to Loughboro Road/Nebraska Avenue, north of Loughboro Road along Rockwood Parkway, Glenbrook Road, Indian Lane and Overlook Terrace and south of Loughboro Road along Maud, Macomb and Lowell Streets. This area has a variety of lot sizes and house sizes.

g. The subject building is a proportionally smaller building than the accessory building on the appellant's lot next door. Mr. Barre's accessory building is 576 square feet in area, which is a lot occupancy of approximately 5.27%, more than twice as much as the subject building.

h. There are other existing accessory buildings that have been approved by the District and are of similar size and scale as related to their lots. Those buildings include 4400 Edmunds Street (an approved 1963 plat and a photograph were submitted), 4521 Dexter Street (an approved 1971 plat and a photograph were submitted), 2817 Woodland Drive (an approved 1994 permit and plan were submitted) and 2900 Benton Place (an approved 1994 permit and plan were submitted). In addition, there are accessory buildings at 2810 44th Street, 4400 Dexter Street, 2930 44th Street, 5063 Overlook Terrace, 2923 45th Street, 2910 45th Street, 3000 45th Street, 4833 Rockwood Parkway and 4934 Indian Lane which are of similar size and scale to the subject building.

i. The Zoning Regulations set minimum area and bulk standards to prevent adverse impact. The R-1-A District is the most restrictive district in the Regulations. Neither the Zoning Administrator nor the Board of Zoning Adjustment in an appeal has the authority to amend the Regulations to add further standards or requirements.

j. The Zoning Administrator may legitimately inquire as to whether a building is an accessory building. Once a building has been determined to be accessory, the Zoning Administrator must then determine only whether the proposed construction meets the specific requirements of the Regulations. It would be an abuse of discretion for the Zoning Administrator to apply other limitations or requirements not specified in the Regulations, such as size, location or choice of materials.

k. The Zoning Regulations do not require the Zoning Administrator to consider the potential adverse impact of an accessory building on other properties.

Mr. Lynch, the intervenor's architect testified that the square footage of the pool house would be reduced from 1,275 square feet to 818 square feet, more than 400 square feet, and that this constituted a reduction in scale as ordered by the Board. On cross-examination, Mr. Lynch acknowledged that the pool house was 780 square feet, as found by the Board in its prior decision, and that the alterations to the loft space did not reduce the square footage of the pool house since that space was not, and is not, considered part of the structure's square footage. In fact, Mr. Lynch acknowledged that Mr. Davidson had challenged, and the Board had rejected, a similar assertion by the appellant in the prior matter. Thus, the only reduction in the size of the pool house proposed by Mr. Davidson was the height of the pool house as a result of the removal of the hip roof and its replacement with a flat roof.

Ms. McCarthy responded to the exhibits relied on by the intervenor showing other accessory buildings. Ms. McCarthy stated that it was not appropriate to use those buildings as a guide to determining what was customary for an accessory pool house because some of the buildings are garages which are treated differently by the Zoning Regulations and are customarily larger than pool houses. Further, only one of the exhibits was a pool house and it included an enclosed pool, not a customary accessory structure. She noted that many of the buildings were permitted because they may have been authorized under other Zoning Regulations and were not accessory buildings, such as one which was located on a separate lot or those which were attached to the main residence.

The appellant argued that the Court of Appeals rejected the intervenor's position that "the Zoning Administrator is limited to determining whether an application for a building permit complies with the specific requirements of the Zoning Regulations".

Advisory Neighborhood Commission 3D, by letter dated January 5, 1995, supported the appeal. The ANC stated that even with the alterations, the "pool house would still be much too large and far too intrusive to meet the zoning requirements and comply with the Board" prior decision." Furthermore, ANC 3D supported Mr. Bottner's opinion, expressed in his July 19, 1994 letter to Mr. Davidson, that the pool house should be reduced in size to 430 square feet.

The Wesley Heights Historical Society supported the appeal, by the testimony of George Watson, its president, and by copy of a letter to the Zoning Administrator dated January 24, 1995. The Society stated that the pool house would still be too large in overall bulk and floor area to qualify as an accessory building. Even with the removal of the hip roof, the height would still be too high and intrusive on the privacy of Mr. Barre's property. The Society also concurred with Mr. Bottner's opinion that the pool house should contain no more than 430 square feet.

FINDINGS OF FACT:

Based on the issues raised and the evidence of record, the Board finds as follows:

1. Pool houses should be compared to other pool houses to determine whether what is built is customary. The customary size for an accessory pool house building in the District of Columbia is 400 to 500 square feet.

2. The pool house constructed by Mr. Davidson will not be reduced in scale by altering the roof from a hip roof to a flat roof, since no other aspect of the size of the pool house is being proportionately reduced.

3. The pool house, as revised, does not reduce the scale or alter the design enough to meet the intent of the Board's decision in Appeal No. 15453.

4. The specifications in the July 19, 1994 letter from Joseph Bottner to Mr. Davidson were consistent with intentions of the Board's decision in Appeal No. 15453.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the appellant is challenging the decision of the Zoning Administrator to issue a building permit for construction of a pool house structure at 4524 Garfield Street, N.W.

In its prior order related to the subject property, the Board directed the intervenor, Mr. Davidson to adjust the design and reduce the scale of the pool house to make it consistent with its use as an accessory building. The Board is of the opinion that the appellant has demonstrated that the subject structure has been designed to be in excess of what is customarily incidental to a pool in a residential property in the District of Columbia.

The Board concludes that on October 5, 1998, the Zoning Administrator erred in deciding to issue a building permit, under the accessory building provisions of the Zoning Regulations, for construction of the structure at the subject premises.

The Board concludes that the Zoning Administrator has the discretion to determine whether a proposed building constitutes an accessory structure under the Zoning Regulations, aside from its strict compliance with the technical requirements of those Regulations. In exercising that discretion, the Zoning Administrator may consider such factors as what use is being made of the structure and the appropriate size and scale for the accessory structure, as compared to the sizes and scales of similar accessory structures in the District of Columbia. The Board credits the testimony of the appellant's expert that pool houses in the District of Columbia are customarily between 400 to 500 square feet. In doing so, the Board rejects the intervenor's argument that the size of non-pool house accessory buildings can be a guide to what is customary for a pool house. To conclude otherwise would permit a property owner to construct in a rear yard a variety of accessory buildings, such as tool sheds, a garage a pool house and other buildings of equal size without regard to their customary use and impact on a residential neighborhood, if they meet other area requirements of the Zoning Regulations. Such a result would be unreasonable. The Board is of the view that the Zoning Commission clearly intended

to treat each accessory building differently depending on its customary size and use. This is demonstrated by the promulgation of regulations governing accessory buildings used as garages.

The Board further concludes that, in exercising discretion to determine whether a proposed structure is an accessory structure, the Zoning Administrator may take into consideration the proximity of the structure to the lot lines of abutting properties.

The Board acknowledges that the Zoning Administrator made an effort to bring the pool house structure into compliance with the Board's decision in Appeal No. 15453. In his letter of July 19, 1994, the Zoning Administrator required that the property be changed in very specific ways. Not only did he require that the structure be reduced by 350 square feet, he also discussed limiting it to one story without a storage loft, reducing the height by two feet and changing the interior layout or design of the structure to limit the uses to pool house-type uses. However, the building permit was issued without requiring that these changes be made. Therefore, the building permit that was issued to Mr. Davidson, which requires a minimal reduction in the height of the structure and alterations to the interior of the pool house, does not address the Board's direction that the **scale** of the building be reduced. The Board notes that the pool house remains almost twice as large as the size of other pool houses that have been constructed as customarily incidental uses to single-family residences. Furthermore, the proximity of the pool house to the appellant's property line makes the structure appear that much more out of scale.

The Board is of the opinion that if the delineated changes had been made, the pool house would be consistent with the Board's prior order and with the intended meaning of the term "accessory building" in the Zoning Regulations. Therefore, the Board concludes that the Zoning Administrator erred in authorizing the issuance of the building permit without requiring that these changes be made.

In light of the foregoing, it is hereby **ORDERED** that the **APPEAL** is **GRANTED** and the **DECISION** of the Zoning Administrator is **REVERSED**.

VOTE: **3 – 1** (Susan Morgan Hinton, Maybelle Taylor Bennett and Laura M. Richards to grant and reverse; Craig Ellis opposed to the motion; Angel F. Clarens not voting, not having heard the case).

THE EXCEPTIONS PROCESS:

This order was issued as a proposed order pursuant to the provisions of D.C. Code Section 1-1509(d). The proposed order was sent to all parties on November 12, 1998. The filing deadline for exceptions and arguments was Friday, December 4, 1998. The deadline for responses was Monday, December 14, 1998. No party to this appeal filed exceptions or arguments relating to the proposed order, therefore, the Board of Zoning Adjustment adopts and issues this order as its final order in this case.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT -- SHEILA CROSS REID, BETTY KING AND JERRY H. GILREATH.

ATTESTED BY: Sheri M. Pruitt-Williams

SHERI M. PRUITT-WILLIAMS
Interim Director

Final Date of Order: DEC 21 1998

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT.

ORD16020/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16020

As Interim Director of the Office of Zoning, I hereby certify and attest that on DEC 21 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard B. Nettler, Esquire
Robins, Kaplan, Miller & Ciresi
1801 K Street, N.W., Suite 1200
Washington, D.C. 20006

Norman Glasgow, Jr., Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006

Mr. and Mrs. Tyrus Barre
2811 Foxhall Road, N.W.
Washington, D.C. 20007

Mr. and Mrs. Ralph Davidson
4524 Garfield Street, N.W.
Washington, D.C. 20007

Mr. Armando Laurenco
Zoning Administrator
Department of Consumer and
Regulatory Affairs
614 H Street, N.W., Room 333
Washington, D.C. 20004

Mr. Joseph D. Murphy
Chairperson
Advisory Neighborhood Commission 3D
PO Box 40846
Palisades Station
Washington, D.C. 20016

Attested By: Sheri M Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

Date: DEC 21 1998

Att./twr